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EXAMINER

EINSMANN, MARGARET V

ART UNIT PAPER NUMBER

1751

DATE MAILED: 08/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/683,824

Applicant(s)

STILES, CHRISTINA

Examiner

Margaret Einsmann

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 12-19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-11, drawn to method of making, classified in class 8, subclass 484.
- II. Claims 12-19, drawn to article, classified in class 428, subclass 195.1.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the product as claimed can be made by another and materially different process, (e.g., providing a white fabric material, printing ink on the fabric material to provide a predetermine pattern or design).

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

During a telephone conversation with Charles L. Thoeming on 07/27/2005 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-11. Affirmation of this election must be made by applicant in replying to this Office action. Claims 12-19 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 102 and 103

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 7-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Schleinz et al., US 5,458,590. Schleinz et al. teaches a process of printing patterns on three dimensional non-woven webs, said webs being suitable for use in personal care products. See abstract and figure 1 which shows a training pants, which is a type of diaper which can be reused until a child soils it. Patentee's process provides a process for printing with multicolor images using flexographic printing. See col 3 lines 58-64. The process provides multicolor printed patterns of images. With training pants, it is desirable to make the product as attractive as possible and as fun to wear in order to encourage the child to progress from training pants to underwear. The products may be printed in bright colors in a number of intricate, registered images. Col 6 lines 36-44. The patterns are color fast, thus reading on applicant's limitation of a color fast dye treatment. Since patentee is providing a fabric material that is white or otherwise color treated, providing a

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pattern, and coloring with more than one color dye to form a pattern on an absorbent, white, three-dimensional fabric web, the claims are anticipated.

Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jamison, US 3,072,124 in view of Schliezn et al., US 5,458,590.

Jamison discloses that rectangular multi-layer cotton gauze diaper have superior performance characteristics over single ply cotton diapers. (Note that cotton diapers are reusable as claimed) He also states that when two layer gauze diapers are folded in thirds, a six layer diaper is formed which has superior softness, absorbency, drying characteristics, pinnability, and the like compared to single layer diapers. Jamison does not disclose a method of masking stains on the diapers. Applicant's method of masking stains on diapers is to form colored patterns. Jamison does not suggest masking stains of diapers by using a providing a printed pattern. Schliezn et al. teaches in the second paragraph of column 1 that the printing of fabrics with inks and dyes is a common and widely used method for imparting patterns and colors to a basic fabric, and that many personal care products such as diapers and training pants include printed designs to improve their appearance. He further states that color printing on cotton is well known in the art. Col 1 lines 33-34. Regarding the limitations of claims 5 and 6, any mother of Jamison's generation knows that a cotton diaper is suitable for use as a burp cloth, and has traditionally been used for that purpose.

It would have been obvious to the man having skill in the art at the time the invention was made to color the cotton multiply diapers of Jamison with a multicolor print, involving providing a pattern and then color treating the pattern or design with more than one dye as claimed to improve their appearance and because Schliezn teaches at column 1 that many diapers

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include patterns and designs and that particularly color printing on cotton substrates is well known in the art.

Claims 1-4, 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holliday, US 4,978,345 et al., in view of Schleinz et al.

Holiday discloses a multi-layer, reusable diaper having a 100% cotton facing sheet and at least one absorbent fibrous batt, a backing sheet, and a decorative outer cover. The sheets are stitched together using a quilting pattern. Accordingly, the diaper comprises cotton and has at least three plies as claimed in claim 2 and further comprises a white absorbent three-dimensional fibrous web as claimed in claim 7. Holliday does not disclose how the decorative covering is patterned and colored.

It would have been obvious to the man having skill in the art at the time the invention was made to form the decorative covering of Holliday's diaper with a multicolor print, involving providing a pattern and then color treating the pattern or design with more than one dye as claimed to improve their appearance because Schlienzt et al. teaches in the second paragraph of column 1 that the printing of fabrics with inks and dyes is a common and widely used method for imparting patterns and colors to a basic fabric, and that many personal care products such as diapers and training pants include printed designs to improve their appearance. He further states that color printing on cotton is well known in the art. Col 1 lines 33-34.

Claims 1, 7, 10-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hibler, US 6,493,879 alone or in view of Schleinz et al.

Hibler teaches reusable protective overlay having a front surface a back surface and a periphery, which is an absorbent three dimensional fibrous web as claimed in claim 7. See

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abstract. Figure 1 shows said web having a decorative pattern thereon. Decorative designs, alphanumeric characters may be placed or printed on the front surface in a variety of colors. See col 4 lines 19-24. Patentee states that the protective overlay is suitable as a bib, apron, napkin or the like which adheres to the wearer's clothes without the addition of strings, ties or the like. See col 2 lines 26 et seq.

Hibler differs from the applicant's claimed process because there is no teaching of how the decorative designs are placed on the fabric web, nor does patentee specifically describe the utility of the web as a burp cloth. It would have been obvious to one having skill in the art at the time the invention was made that the decorative designs were made by the process as claimed because it is notoriously well known that decorations on items designed for infants and children are traditionally supplied in multicolored patterned designs. It would have been obvious also that the fibrous web is suitable for utility as a burp cloth because it is described as a protective overlay for clothing, and that is the definition of a burp cloth.

Alternatively It would have been obvious to the man having skill in the art at the time the invention was made to form the decorative designs on Hibler's web with a multicolor print, involving providing a pattern and then color treating the pattern or design with more than one dye as claimed to improve their appearance because Schlien et al. teaches in the second paragraph of column 1 that the printing of fabrics with inks and dyes is a common and widely used method for imparting patterns and colors to a basic fabric, and that many personal care products include printed designs to improve their appearance.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Margaret Einsmann whose telephone number is 571-272-1314.

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The examiner can normally be reached on 7:00 AM -4:30 PM M-W and alternate Fridays. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on 571-272-1316.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

8/15/05

Margaret Einsmann
Margaret Einsmann
Primary Examiner
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